

HOUSE BILL REPORT

E2SHB 1488

As Passed House:
February 14, 2006

Title: An act relating to brominated flame retardants.

Brief Description: Prohibiting the sale of products that contain polybrominated diphenyl ethers.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Hunter, Priest, Dickerson, Tom, Upthegrove, Jarrett, Springer, McCoy, B. Sullivan, Conway, Simpson, Flannigan, McIntire, Moeller, Chase, Williams, Kenney, Sells, Murray, Fromhold, Pettigrew, Darneille, Lantz, Clibborn, Kagi, Hasegawa, Morrell, McDermott, Hunt, Blake, Campbell, Cody, Hudgins, Ericks, O'Brien and Nixon).

Brief History:

Committee Activity:

Natural Resources, Ecology & Parks: 2/17/05, 2/28/05 [DPS];
Appropriations: 3/5/05 [DP2S(w/o sub NREP)].

Floor Activity:

Passed House: 2/14/06, 97-0.

Brief Summary of Engrossed Second Substitute Bill

- Bans the manufacture, sale, or distribution of most products containing more than 1 percent of Penta-BDE or Octa-BDE after January 1, 2007.
- Directs the Department of Ecology and the Department of Health to report to the Legislature by December 15, 2007, regarding the use of Deca-BDE in products, human health effects of exposure to Deca-BDE, and the availability of alternatives.

HOUSE COMMITTEE ON NATURAL RESOURCES, ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives B. Sullivan, Chair; Upthegrove, Vice Chair; Dickerson, Eickmeyer, Hunt and Williams.

Minority Report: Do not pass. Signed by 5 members: Representatives Buck, Ranking Minority Member; Kretz, Assistant Ranking Minority Member; Blake, DeBolt and Orcutt.

Staff: Jeff Olsen (786-7157).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Natural Resources, Ecology & Parks. Signed by 16 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Bailey, Cody, Conway, Darneille, Dunshee, Haigh, Hunter, Kagi, Kenney, Linville, McDermott, Miloscia, Priest and Schual-Berke.

Minority Report: Do not pass. Signed by 12 members: Representatives Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Buri, Clements, Grant, Hinkle, Kessler, Pearson, Talcott and Walsh.

Staff: Charlie Gavigan (786-7340).

Background:

Polybrominated diphenyl ethers, or PBDEs, are members of a broader class of brominated chemicals used as flame retardants. They are often added to products such as computers, televisions, furniture, and carpet pads to reduce the risk of fire if a product is exposed to heat or flame. There are three main types of PBDEs used in consumer products; Penta-BDE, Octa-BDE, and Deca-BDE. Polybrominated diphenyl ethers have been measured in blood, fat, and breast milk in people around the world, and there is concern about potential health effects in humans.

On January 28, 2004, Governor Locke signed Executive Order 04-01, directing state agencies to take certain actions regarding persistent toxic chemicals. The Department of Ecology (DOE), in consultation with the Department of Health (DOH), was directed to move forward immediately in developing a chemical action plan that identifies actions the state may take to reduce threats posed by PBDEs, and recommend actions by December 1, 2004.

On December 31, 2004, the DOE and the DOH released the *Washington State Polybrominated Diphenyl Ether (PBDE) Chemical Action Plan: Interim Plan* (Interim Plan). The Interim Plan recommends that the Legislature should prohibit the manufacture, distribution, or sale of new products containing Penta-BDE and Octa BDE by July 2006. The ban may include an exemption for products that contain recycled material for products containing Penta-BDE and Octa-BDE. The DOE and the DOH must develop a proposal for a ban on appropriate products containing Deca-BDE by December 2005. By July 2006 the DOE must establish appropriate disposal and recycling practices for products containing PBDEs. The Interim Plan also included restrictions for the state's purchase of PBDE products, the development of educational materials, and direction for the Department of Labor and Industries to develop ways for employers and employees to minimize exposure to PBDEs. The Legislature provided \$83,000 in the 2004 Supplemental Operating budget (Chapter 276, Laws of 2004, Section 301 (18)) for the DOE to develop a chemical action plan for PBDEs.

Summary of Engrossed Second Substitute Bill:

After January 1, 2007, no person may manufacture, knowingly sell, or distribute for sale any product containing more than 1 percent of Penta-BDE or Octa-BDE. There are exceptions to the ban for original equipment replacement parts, the processing and disposal of recyclables, new and used transportation vehicles and parts, equipment used primarily for military and space applications, the sale of used products, and medical devices. The ban does not restrict the ability of a manufacturer, importer, or distributor from transporting products containing PBDEs through the state or storing products for later distribution outside the state. Manufacturers or users of safety systems required by the Federal Aviation Administration may apply for an exemption for a specific use of Penta-BDE or Octa-BDE by filing a written petition to the DOE. The DOE may issue an exemption for up to 18 months if a technically feasible alternative is not available at reasonable cost or the potential harm of the alternative is greater than using Penta-BDE or Octa-BDE. The exemption may be renewed if the specific use continues to meet the criteria established for the exemption.

The DOE must develop a program to assist retailers in identifying potential products containing Penta-BDE and Octa-BDE. In-state retailers in possession of products on January 1, 2007 that are banned for sale, may exhaust their stock through sales to the public. The DOE and the DOH must review available scientific research on Deca-BDE and report to the Legislature by December 15, 2007 regarding the use of Deca-BDE in products sold in Washington, human health effects of exposure to Deca-BDE, and the availability of alternatives. The report must look at any available data on the human body burden or environmental occurrence of Deca-BDE, and whether Deca-BDE breaks down into other chemicals that could pose public health concerns.

A civil penalty not to exceed \$1,000 is established for each violation of the provisions regarding Penta-BDE and Octa-BDE. Repeat violators are subject to penalties not to exceed \$5,000 for each offense. Proceeds from penalties are deposited in the State Toxics Control Account.

Appropriation: None.

Fiscal Note: Available on substitute bill.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (Natural Resources, Ecology & Parks) (In support of original bill) Flame retardants are used in a wide variety of products including furniture and televisions. The release of certain PBDEs is a concern for children and infants. The first step in addressing the problem is to turn off the supply and stop putting these chemicals into our products. In 2001, 49 million pounds of PBDEs were used in products, and this amount is growing every year. Recent studies show that Deca-BDE, which was thought to be stable, breaks down into forms that are toxic. PBDEs build up in fatty tissues, and can be found in breast milk. This approach is sensible, and provides for exemptions in cases where alternatives are not available. PBDEs are not bonded in products, which allows it to release over time. A recent national study of PBDE levels in breast milk demonstrated that the average mother in the

United States has PBDE levels 75 times higher than other countries. Studies have shown that PBDEs impact thyroid and endocrine factors. All PBDEs should be banned because there are alternatives available. Phasing out PBDEs builds on earlier support for banning mercury. Firefighters support the elimination of PBDEs. PBDEs have been found in fish, and the commercial fishing industry's job is to bring fish, a healthy food and public resource, to the public. A mother who wants to breast-feed her infant can't choose to not have PBDEs in her breast milk. We can't use human studies, and we shouldn't wait for more problems before taking action. Recyclers are exposed to these harmful chemicals and it is hazardous for worker safety.

(Neutral on original bill) The Departments of Ecology and Health conducted a stakeholder group to develop an Interim Chemical Action Plan. Recent information shows that Deca-BDE breaks down into chemicals that can be picked up by humans. Not all of the information is available regarding which products contain Deca-BDE, and what steps need to be taken. Exposure pathways are not fully understood. There is a concern about developing fetuses, where exposure inhibits childhood learning. The Interim Plan calls for more time to study Deca-BDE.

(With concerns on original bill) There is a problem with autofluff and sewage sludge, and we need to figure out how to properly dispose of those products. The auto industry is caught in the middle of the PBDE loop, and this bill goes too far too fast.

Testimony For: (Appropriations) Banning these chemicals is an important public health policy, and it can be funded with existing state toxics funding. The substitute bill contains amendments to address concerns from retailers and industry. There is an exemption provision in the bill, in addition to the ability of the Governor to delay the ban of Deca-BDE up to two years if reasonable alternatives are not available.

Testimony Against: (Natural Resources, Ecology & Parks) There are three PBDE products; Penta, Octa, and Deca. It is not necessary to ban Octa or Penta since these chemicals are being phased out and taken off of the market. Deca-BDE is a safe and an effective flame retardant product. Flame retardants delay the spread of fires, allow people to escape, and reduces the potential for fire. In 2003, there were 1.5 million fires and 4,000 people died, resulting in substantial property loss. There are not alternatives available, and these products have not been tested and may cause other problems. A ban on Deca-BDE is not scientifically defensible, Deca-BDE is not classified as toxic or bioaccumulative, and Deca-BDE is not banned in any area of the world. Retailers are concerned about costs to implement the bill and being forced to pay to dispose of products.

Testimony Against: (Appropriations) Retailers don't know which products contain PBDEs, and it would be difficult for retailers to comply with requirements in the bill. Since Washington would be the only state not allowing certain products containing Deca-BDE, consumers may purchase products online. No where else is there a ban on Deca-BDE, it is not toxic, and it is not considered a persistent bioaccumulative toxin. Flame retardants save lives. General Administration must supply products without PBDEs, and it may be expensive for the state to comply with the ban.

Persons Testifying: (Natural Resources, Ecology & Parks) (In support of original bill) Dr. Kim Hooper, California Toxicology Lab; Erika Schreder, Washington Toxics; Mo McBroom, Washington Public Interest Research Group; Dr. Charles Welms, Physicians for Social Responsibility; Cliff Traisman, World Energy Council/Washington Conservation Voters; Jeremy Brown, Washington Trollers Association; Kate Davies, Antioch University; Pam Johnson; Ruth Shearer, Ph.D.; Karen McDonell; Bre Holt; Craig Lorch, Total Reclaim; Pam Tazioli, Breast Cancer Fund; and William Giddings.

(Neutral on original bill) Greg Sorlie, Department of Ecology; and Rob Duff, Department of Health.

(With concerns on original bill) Randy Ray, Pacific Seafood Processor.

(Opposed to original bill) Brad Tower, Susan Landry, Dave Sanders, and Ray Dawson, Bromine Science and Environmental Forum; Montie Barringer and Mark Johnson, Washington Retail Association; Grant Nelson, Association of Washington Business; Jim King, Independent Business Association; and Don Phelps, Auto Recyclers of Washington.

Persons Testifying: (Appropriations) (In support) Nick Federici, Washington Toxics Coalition; Clifford Traisman, Washington Conservation Voters and Washington Environmental Council; and Mo McBroom, Washington Public Interest Research Group.

(Concerns) Mark Johnson, Washington Retail Association.

(Opposed) Brad Tower, Bromine Science and Environmental Forum.

(Comments) Ted Sturdevant, Department of Ecology.

Persons Signed In To Testify But Not Testifying: (Natural Resources, Ecology & Parks) (With concerns on original bill) Nancee Wildermuth, Alliance of Automobile Manufacturers; Jim Zimmerman, Fish Farms; and Ed Owens, Washington Salmon.

(Opposed to original bill) Nancy Atwood, American Electronic Association

Persons Signed In To Testify But Not Testifying: (Appropriations) None.